

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2017 MAR 31 AM 11:17

WhistlePig, LLC,

Plaintiff,

v.

Chatham Imports, Inc.,

JNJ Enterprises, LLC,

Defendants.

Civil Action No. _____

BY

CLERK

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COMPLAINT FOR
DECLARATORY JUDGMENT

2:17-cv-55-wks

DEMAND FOR JURY TRIAL

COMPLAINT AND JURY DEMAND

Plaintiff WhistlePig, LLC ("WhistlePig"), for its Complaint against Defendants Chatham Imports, Inc. and JNJ Enterprises, LLC (collectively, "Chatham Imports") alleges as follows:

Nature of Action

1. This is a declaratory judgment action on behalf of WhistlePig seeking a declaration that WhistlePig's use of the term "crop" does not violate the Lanham Act, 15 U.S.C. § 1114, § 1125(a), and/or related state laws. Chatham Imports has alleged that WhistlePig's use of the term "crop" is infringing Chatham Imports' trademark, has issued a cease and desist letter demanding that WhistlePig cease use of the term "crop," and has implicitly threatened legal action against WhistlePig if it does not comply with its demands.

Parties

2. Plaintiff WhistlePig, LLC is a Delaware limited liability company, with a principal place of business in Shoreham, Vermont.

3. On information and belief, Defendant Chatham Imports, Inc. is a New York corporation, with a principal place of business in New York, New York.

4. On information and belief, Defendant JNJ Enterprises, LLC is a Delaware limited liability company, with a principal place of business in North Haven, Connecticut.

Jurisdiction and Venue

5. The Court has jurisdiction under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and under the laws of the United States concerning actions relating to trademark, 28 U.S.C. § 1338(a), and unfair competition, 28 U.S.C. § 1338(b).

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

7. On information and belief, this Court has personal jurisdiction over Defendants because Defendants conduct business transactions in this State.

Facts

8. WhistlePig is a distillery located on a farm in Vermont. It recently began selling a new whiskey called FarmStock. The FarmStock whiskey is produced using rye, wood, and water from WhistlePig's own farm. In other words, FarmStock is WhistlePig's first "farm to bottle" whiskey.

9. As shown by a review of the label, the FarmStock whiskey is branded with WHISTLEPIG as the top-level mark and FARMSTOCK as the second-level mark. Each release of whiskey is also designated with a "crop" number corresponding to the crop of rye used as an ingredient in making the whiskey. For example, the first is "CROP No. 001."

10. On information and belief, Chatham Imports, Inc. is a wine and spirits importer and is the U.S. sales agent for Crop Harvest Earth Vodkas. As shown by a review of the label and its website at <http://www.cropvodka.com/>, this vodka is branded with CROP HARVEST EARTH as the top-level mark.

11. The WhistlePig® FarmStock™ whiskey and Crop Harvest Earth® Organic vodka labels and products are entirely different in appearance and overall commercial impression:



12. On information and belief, Chatham Imports, Inc. uses the mark CROP HARVEST EARTH to identify the Crop Harvest Earth Vodkas. JNJ Enterprises, LLC is listed in the USPTO database as the owner of the CROP HARVEST EARTH mark, CROP HARVEST EARTH and Design mark, and CROP mark.

13. On or about March 21, 2017, WhistlePig received a demand letter from Chatham Imports claiming that WhistlePig's use of "crop," "Crop 001," "Crop NO. 1" and "001 Crop" (collectively, the "Accused Crop Designations") is likely to cause consumer confusion with Chatham Imports' alleged CROP marks, and therefore constitutes trademark infringement. Chatham Imports also claimed that WhistlePig's use of FARMSTOCK and the number "1" exacerbated the likelihood of consumer confusion. Chatham Imports demanded that WhistlePig "immediately" cease all use of the Accused Crop Designations, and asked for written confirmation that WhistlePig would comply with the request by March 30, 2017. A true and correct copy of the March 21, 2007 letter is attached as Exhibit A.

14. The above allegations are incorporated in the claims below.

COUNT I

Declaratory Judgment of No Lanham Act or Unfair Competition Violation

15. WhistlePig has a reasonable apprehension of suit by Chatham Imports alleging violation of the Lanham Act and/or other unfair competition laws.

16. There is a substantial and continuing justiciable controversy between WhistlePig and Chatham Imports as to Chatham Imports' right to threaten or maintain suit for violation of the Lanham Act and/or other unfair competition laws..

17. WhistlePig is using the Accused Crop Designations in a descriptive manner to designate the crop of rye used for a particular release of its FarmStock whiskey, and not in a trademark sense.

18. WhistlePig's use of the Accused Crop Designations is not likely to cause customer confusion as to source, origin, or affiliation, and therefore does not infringe Chatham Imports' CROP marks, or any other registered or unregistered trademarks owned by Chatham Imports.

19. WhistlePig's use of FARMSTOCK and/or the number "1" is not likely to cause customer confusion as to source, origin, or affiliation, and therefore does not infringe any registered or unregistered trademark rights owned by Chatham Imports.

20. WhistlePig should not be required to operate in indefinite apprehension of threats or possible legal action against it by Chatham Imports.

21. The Court should issue a declaratory judgment stating that Chatham Imports is without right or authority to threaten or to maintain suit against WhistlePig for trademark infringement, unfair competition, and/or false designation of origin, including any alleged violation of the Lanham Act or related state laws.

PRAYER FOR RELIEF

WHEREFORE, WhistlePig prays for relief as follows:

- 1) Entry of judgment that Chatham Imports is without right or authority to threaten or to maintain suit against WhistlePig for trademark infringement, unfair competition, and/or false designation of origin, including any alleged violation of the Lanham Act or related state laws.
- 2) Entry of a preliminary injunction enjoining Chatham Imports, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Chatham Imports from threatening WhistlePig or any of its owners, agents, servants, or employees with litigation or charging any of them either verbally or in writing with trademark infringement, unfair competition, or false designation of origin.
- 3) Entry of judgment for WhistlePig's costs and reasonable attorney fees.
- 4) Such other and further relief as the Court may deem appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury.

Dated at Burlington, Vermont this 31st day of March, 2017.

DOWNS RACHLIN MARTIN PLLC



Cathleen E. Stadecker

cstadecker@drm.com

Walter E. Judge

wjudge@drm.com

199 Main Street

PO Box 190

Burlington, VT 05402-0190

Phone: 802.863-2375

Fax: 802.862.7512

Attorneys for Plaintiff,
WhistlePig, LLC

17363876.1